

THE MARK O. HATFIELD

# COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
A Court Publication Supported by the Attorney Admissions Fund  
Vol. IX, No. 18, September 16, 2003

## Environment

Plaintiff filed an action challenging the U.S. Fish & Wildlife Service's denial of his petition to remove the Lost River and shortnose sucker fish from the endangered species list. Judge Robert E. Jones granted plaintiff's motion to supplement the administrative record with five additional documents, and held that the FWS failed to adequately explain its conclusions and found that the agency's conclusions were not supported by the record. Judge Jones remanded the action to the FWS with instructions to either reissue its initial finding with more explanation or proceed to a status review. Moden v. U.S. Fish & Wildlife Service, CV 02-305-JO (Opinion, Sept. 3, 2003).

Plaintiff's Counsel:

James Buchal

Defense Counsel:

Ruth Ann Lowery (D.C.)

## Attorney Fees

In successfully defending an action for damages under Oregon's Unfair Trade Practices Act (UTPA) and various negligence

theories, defendant incurred over \$450,000 in legal fees and costs. Defendant petitioned to recover its costs as a "prevailing party" under the UTPA. Judge Anna J. Brown rejected the petition because she found she lacked subject matter jurisdiction over the plaintiff's UTPA claims and, thus, she also lacked jurisdiction to award fees under the Act. The court granted defendant's summary judgment motion because plaintiffs were not "consumers" within the meaning of the UTPA. Judge Brown also noted that a dismissal for lack of subject matter jurisdiction was not a ruling on the merits necessary to give rise to prevailing party status. Lanphere Enterprises, Inc. v. Jiffy Lube Int'l Inc., CV 01-1168-BR (Opinion, Sept. 9, 2003).

Plaintiffs' Counsel:

Craig Nichols,

Duane Bosworth

Defense Counsel:

Randolph C. Foster

## Conflicts

Plaintiff was injured while

traveling by plane from Portland to Orange County; during a layover in Salt Lake City, she was hurt by personnel responsible for assisting her in her wheelchair. Plaintiff argued that Oregon law should apply; defendant argued that it contracted out for assistance services in Salt Lake and that Utah law should apply since the injury occurred there. There was no question that the two jurisdictions' laws differed significantly relative to the relief available to plaintiff's spouse and comparative fault rules.

Judge Ann Aiken found that the fact that defendant contracted out this particular service was not dispositive; she also noted that the fact the injury occurred in Utah was purely fortuitous and due to defendant's routing schedule. Judge Aiken determined that Oregon had the greatest interest in the outcome of the dispute given a number of factors including that the plaintiff is an Oregon resident who purchased the ticket in Oregon. Hill v. Delta Airlines, CV 02-6297-AA (Opinion, August, 2003).

Plaintiff's Counsel:

## 2 The Courthouse News

William A. Barton

Carl Amala

Defense Counsel:

Timothy Miller

### Employment

Plaintiff filed an action under the ADA claiming that her employer refused to promote her from part-time to full-time status because she had epilepsy. The employer moved for summary judgment alleging that plaintiff was not disabled under the ADA because her condition was controlled with medication. Judge Janice Stewart examined the record and found evidence that plaintiff still suffered from seizures and various side-effects despite the medication such that a jury could find that she was substantially limited in the major life activity of working. The court rejected plaintiff's allegations that she was limited in her ability to see, breath or speak, but found sufficient evidence that plaintiff was unable to maintain an erratic work schedule that might be necessary for full-time work with the defendant. Knutson v. Winco Foods, Inc., CV 02-1145-ST (Opinion, June 5, 2003).

Plaintiff's Counsel:

T. Ann Gregory

Defense Counsel:

Bruce Rubin

### FTCA

Plaintiffs filed an action against

several USDA employees claiming negligence and civil conspiracy relative to a farm loan. The U.S. filed a motion to substitute as the only named defendant because all alleged activities of the USDA employees were taken during the course and scope of their employment. The U.S. Attorney included a certification as required by statute. Judge Ann Aiken reviewed the certification de novo and applied Oregon's law of respondeat superior. The court found that plaintiff failed to establish that the individual defendants did not act in the course and scope of their employment for all relevant times alleged in the complaint.

Accordingly, Judge Aiken accepted the U.S. Attorney's certification and ordered that the U.S. be substituted as the only defendant. Bridges v. USDA, CV 02-1685-AA (Opinion, August, 2003).

Plaintiff's Counsel:

James D. Van Ness

Defense Counsel:

Brittania I. Hobbs

### Attorney Fees

Judge Janice Stewart granted plaintiffs' motion for partial summary judgment in an FLSA claims based upon various wage and hour violations. Plaintiffs

were caneberry pickers who were not paid a minimum wage, were denied all wages due upon termination and/or who had their wages withheld to pay rent without their express authorization. Plaintiffs then petitioned for attorney fees and costs of approximately \$80,000.

Judge Stewart noted that even though the defendant filed no objections, the court had an independent duty to review the petition and determine, under a lodestar analysis whether the requested fees were reasonable. The court found that the requested hourly rates of \$193 and \$200 were reasonable given the experience of trial counsel; she also found that the hours expended were reasonable given numerous discovery disputes and the large number of wage records that had to be reviewed. The court deducted fees already awarded as a discovery sanction and otherwise granted the petition in its entirety. Antonio-Garcia v. Shadrin, CV 99-655-ST (Findings & Recommendation, May 28, 2003; Adopted by Judge Jones, June 24, 2003).

Plaintiffs' Counsel:

James Boon

Defendant: Pro Se